

BEFORE THE
CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

THIS DECISION DESIGNATES FORMER BENEFIT
DECISION NO. 6755 AS A PRECEDENT
DECISION PURSUANT TO SECTION
409 OF THE UNEMPLOYMENT
INSURANCE CODE.

In the Matter of:

MELANIA FERREY
(Claimant)

PRECEDENT
BENEFIT DECISION
No. P-B-314

FORMERLY BENEFIT DECISION No. 6755
--

S.S.A. No.

The claimant appealed to a referee from a determination of the Department of Employment which disqualified her for benefits for five weeks commencing May 10, 1964 under section 1257(b) of the Unemployment Insurance Code. She also appealed from a notice of overpayment which held her liable for an overpayment in the sum of \$66. Subsequent to the issuance of Referee's Decision No. SF-7129, we set aside the decision of the referee and assumed jurisdiction under section 1336 of the code.

STATEMENT OF FACTS

The claimant has been employed in the laundry industry for the past eight years. With the exception of one month's work as a factory worker, she has had no other employment experience. She is a member of the laundry workers' union and holds a work permit with the warehouseman's union.

Prior to March 1964 she had worked full time in a laundry. Her earnings were inadequate to provide the necessary support for her five minor children and she thereupon sought and obtained part-time work with a hotel laundry where she works on an on-call basis during evenings and on weekends.

The union which has jurisdiction over the laundry industry in the San Francisco area has a policy prohibiting a member from working for two employers within their jurisdiction simultaneously. Upon being apprised of the union's policy, she resigned her full-time job with the laundry and obtained a work permit from the warehouseman's union which authorized her to seek and obtain work as a factory worker. This factory work commenced March 3 and terminated March 31, 1964 when she was laid off for lack of work. Although retaining her part-time job, she nevertheless registered for work and established a valid claim for benefits effective March 29, 1964.

When she first registered for work she was given an entry code as a domestic worker. She was given no work code as a factory worker due to the short period of time she had engaged in such work. During a subsequent interview she was recoded with the primary classification as laundry worker.

On May 14, 1964 she was interviewed by a representative of the placement section of the Department of Employment. A work opportunity in a laundry was made known to the claimant at that time. The claimant, however, explained to the placement officer that under union rules she was not permitted to work two jobs in the laundry field. She further explained that because of the necessity of added income she would not give up the additional earnings derived from the part-time job with the hotel. The referral was thereupon withheld from the claimant.

She continued to certify for benefits and was paid partial benefits totalling \$66 for the weeks ending May 16 and May 23, 1964. The evidence indicates that the benefit section of the department was aware of the claimant's refusal to apply for work on May 14, 1964 when it paid these benefits. Thereafter, on June 4, 1964, the department made its determination which held the claimant was disqualified for benefits for five weeks commencing May 10, 1964, and on June 8, 1964 issued a notice of overpayment assessing the claimant \$66 for benefits paid during a period of disqualification; specifically, the weeks ending May 16 and May 23, 1964.

All work in the laundry field in the San Francisco area is under a union jurisdiction and all placements for such work are obtained through the Department of Employment. The work opening which was made known to the claimant on May 14 provided a basic 40-hour week and paid union scale. It was a permanent, full-time job.

REASONS FOR DECISION

Our initial concern must, of necessity, be directed towards the department's retrospective determination of June 4, 1964. In paying the claimant benefits for the weeks ending May 16 and May 23, 1964, the department, in effect, made a determination as to the claimant's eligibility for benefits at that time (Benefit Decision No. 5568). It would appear, therefore, that the determination disqualifying the claimant for benefits commencing May 10, 1964 was a redetermination made beyond the ten-day period provided under section 1332 of the code; at least as to the week ending May 16, 1964. However, in Benefit Decision No. 6748, we held that until a determination is issued in writing, the time limitation for making a redetermination does not commence to run. Therefore, the department was not precluded from reconsidering the claimant's eligibility on June 4, 1964.

Section 1257(b) of the Unemployment Insurance Code provides:

"1257. An individual is also disqualified for unemployment compensation benefits if:

* * *

"(b). He, without good cause, refused to accept suitable employment when offered to him, or failed to apply for suitable employment when notified by a public employment office."

Section 1258 of the code defines suitable employment as being work in the individual's usual occupation or for which he is reasonably fitted, regardless of whether or not it is subject to the code.

The work opportunity made available to the claimant was work in the laundry field, an occupation pursued by

her for at least eight years, and was a full-time, permanent job paying union scale. There is no question therefore, but that the work was suitable work for this claimant. While an actual referral was not made to the claimant, we held in Benefit Decisions Nos. 1527 and 6104 that the absence of a formal referral where the claimant has indicated an unwillingness to accept a work opportunity is immaterial in determining whether there has been a refusal of a referral to suitable employment.

The claimant herein indicated her inability to work two jobs concurrently and declined to give up her part-time work, precluding a referral by the department. The issue, therefore, is whether the claimant had good cause for her failure to apply for suitable work.

In Benefit Decision No. 5855 the claimant was working on a temporary part-time job for one week when she refused an offer of suitable employment because she did not want to work the night shift. She had also indicated that she was not interested in full-time work. The basic issue in the case was the availability of the claimant; however, we held that since the offer of work was made to the claimant while she was employed, she had good cause for refusing the offer. In arriving at our decision, we cited Benefit Decision No. 5707, wherein we had previously held that a claimant who is fully employed under a vacation status had good cause for refusing referrals to employment.

Section 1251 of the code provides that unemployment compensation benefits are payable from the Unemployment Fund to unemployed individuals eligible under Part 1, Division 1 of the code. Section 1252 of the code defines an unemployed individual in the following language:

"1252. An individual is 'unemployed' in any week during which he performs no services and with respect to which no wages are payable to him, or in any week of less than full-time work if the wages payable to him with respect to that week are less than his weekly benefit amount. . . ."

It is clear that if a claimant is totally unemployed, and fails without good cause to apply for suitable work,

the disqualifying provisions of section 1257(b) of the code are applicable. Similarly, a claimant who is employed on a part-time basis and who, during a particular week earns less than his weekly benefit amount, is an "unemployed individual" and is subject to the disqualifying provisions of section 1257(b).

In the instant case the claimant failed to apply for full-time suitable employment because she wished to retain her part-time employment. In our opinion, such refusal was without good cause and she was properly disqualified under section 1257(b) of the code. Insofar as Benefit Decision No. 5855 holds to the contrary with respect to the claimant's refusal of employment, it is overruled.

Section 1375 of the Unemployment Insurance Code provides:

"1375. Any person who is overpaid any amount as benefits under this part is liable for the amount overpaid unless:

"(a) The overpayment was not due to fraud, misrepresentation or wilful nondisclosure on the part of the recipient, and

"(b) The overpayment was received without fault on the part of the recipient, and its recovery would be against equity and good conscience."

The claimant herein, having received benefits during a period of disqualification, has received benefits to which she was not entitled. We must concern ourselves, therefore, with the claimant's liability to repay such benefits.

In our opinion, the overpayment was not due to fraud, misrepresentation or wilful nondisclosure on the part of the claimant; nor can we find that she was at fault. The department was aware of the fact that she had refused to apply for suitable employment when it paid the benefits in question. In our opinion, it would be against equity and good conscience to require the claimant to repay the overpaid benefits (Benefit Decision No. 6547).

DECISION

The determination of the department is affirmed. The claimant is disqualified for benefits under section 1257(b) of the code for five weeks commencing May 10, 1964 as provided by section 1260(b) of the code. The overpayment is waived.

Sacramento, California, October 1, 1964.

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

GERALD F. MAHER, Chairman

LOWELL NELSON

NORMAN J. GATZERT

Pursuant to section 409 of the Unemployment Insurance Code, the above Benefit Decision No. 6755 is hereby designated as Precedent Decision No. P-B-314.

Sacramento, California, May 11, 1976.

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

DON BLEWETT, Chairperson

MARILYN H. GRACE

CARL A. BRITSCHGI

HARRY K. GRAFE

RICHARD H. MARRIOTT